

CHAPTER 7

BROADBAND TELECOMMUNICATIONS SYSTEMS

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3-7-1: PURPOSE: The purpose of this Chapter is to provide for the granting of nonexclusive franchises to construct, operate and maintain broadband communication networks in the public streets of the Village; to provide for the specifications, procedures and standards for the same; to provide for the regulation of such networks; and to provide for the payment to the Village for the privilege of exercising the rights granted by such franchises.

3-7-2: DEFINITIONS: All capitalized terms not otherwise defined in this Chapter shall

have the meanings ascribed to such terms in the Cable Act, the Cable and Video Competition Law of 2007, 220 ILCS 5/21-100, et seq., and the Cable and Video Customer Protection Law, 220 ILCS 5/22-501, et seq. (Amd. Ord. 11-3182-04, eff. 1/24/11)

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| BASIC SERVICE | Shall have the meaning ascribed to the term Abasic cable service@ in the Cable Act. |
| BOARD or VILLAGE BOARD | The Board of Trustees of the Village of Lincolnshire. |
| BROADBAND TELECOMMUNICATIONS or NETWORK | Any network operated in whole or in part within the right-of-way capable of providing Cable Service, as defined in the Cable Act, Video Service, as defined in the Cable and Video Competition Law of 2007, 220 ILCS 5/21 100, et seq. |
| CABLE ACT | The Cable Communications Policy Act of 1984, 47 U.S.C. ' 521, et seq. |
| CABLE SERVICE | Means that term as defined in 47 U.S.C. 522(6). |
| COMMISSION | The Illinois Commerce Commission |
| FCC | The Federal Communications Commission and any legally appointed or elected successor with respect to Federal regulation and licensing in connection with the subject matter of this Chapter. |
| FRANCHISE | The nonexclusive rights granted pursuant to this Chapter to construct and operate a Broadband Telecommunications Network along the public streets within all or a specified area of the Village. Any such authorization, in whatever Franchise (cont.)form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the Village as required by other ordinances and laws of this Village. |
| GRANTEE | Any person receiving a franchise pursuant to this Chapter and under the granting franchise ordinance, its present subsidiaries and affiliates, and its lawful successor, transferee or assignee. |
| GROSS REVENUES | All consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received for the operation of a cable or video system to provide cable service or video service within the Village. |

(1) Gross revenues shall include the following:

- (i) Recurring charges for cable or video service.
- (ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
- (iii) Rental of set top boxes and other cable service or video service equipment.
- (iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
- (v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
- (vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
- (vii) A *pro rata* portion of all revenue derived by the Grantee or Holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the operator's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- (viii) Compensation received by the Grantee or Holder that is derived from the operation of its network to provide cable service or video service with respect to commissions that are received by the Grantee or Holder as compensation for promotion or exhibition of any products or services on its network, such as a *Ahome shopping®* or similar channel, subject to subsection (ix).
- (ix) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the Grantee or Holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- (x) The service provider fee permitted by 220 ILCS 5/21-801(b) and the franchise fee collected under any Franchise issued under Section 3-7-3.

(2) Gross revenues do not include any of the following:

- (i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
- (ii) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the Grantee or Holder to the

- extent the refund, rebate, credit, or discount is attributable to cable service or video service.
- (iii) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or nonvideo service in accordance with the Grantee-s or Holder-s books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
 - (iv) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser-s subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay a service provider fee or franchise fee with respect to the service.
 - (v) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the Grantee or Holder and required to be remitted to the taxing entity, including sales and use taxes.
 - (vi) Security deposits collected from subscribers.
 - (vii) Amounts paid by subscribers to Ahome shopping@ or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a Grantee or Holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the Grantee or Holder has the effect of evading the payment of the service provider fee or franchise fee which would otherwise be paid on the cable service or video service.

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| HOLDER | A person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401. |
| INCUMBENT CABLE OPERATOR | A person or entity that provided cable services or video services in the Village of Lincolnshire under a franchise agreement with the Village pursuant to Section 3-7-3 of the Village Code on January 1, 2007. |
| MAY | "May" is permissive. |
| PERSON | An individual, partnership, limited partnership, asso organization, corporation or any lawful successor, transf assignee of the same. |
| REASONABLE NOTICE | Written notice addressed to the grantee at its office, |

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| | which notice shall be certified and postmarked not less than seven (7) days prior to the day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, Saturdays, Sundays and holidays excluded. |
| SERVICE | The provision of Acable service@ or Avideo service@ to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401. |
| SHALL and MUST | Each is mandatory and not merely directory. |
| SUBSCRIBER | Shall have the meaning ascribed to such term in 47 CFR 76.5(ee)(1). |
| VILLAGE | The Village of Lincolnshire, a Municipal corporation in the State of Illinois. |

3-7-3: FRANCHISE REQUIREMENT; AUTHORITY GRANTED BY A RANCHISE:

- A. Authorization Required: A person or entity, including a telecommunications carrier, seeking to provide Cable Service or Video Service pursuant to this Chapter shall not use the public rights-of-way for the installation or construction of facilities for the provision of Cable Service or Video Service or offer Cable Service or Video Service until it has obtained either: (i) a State-issued authorization from the Commission to offer or provide cable or video service under Section 401 of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 et seq.); or (ii) a cable franchise from the Village under Section 11-42-11 of the Illinois Municipal Code (65 ILCS 5/11-42-11). (Amd. Ord. 07-3008-36, eff. 11/26/07)
- B. Authority Granted: Any franchise granted hereunder shall give to the grantee, subject to the provisions of this Chapter, the right and privilege at its own expense to construct, erect, operate, modify and maintain in, upon, along, above, over and under the streets such antennas, BTNs, electronic equipment and other network appurtenances as are necessary for the operation of a BTN in the Village.

3-7-4: TERMS AND CONDITIONS FOR EACH FRANCHISE:

- A. Franchise Nonexclusive: Any franchise granted hereunder shall not be exclusive. The Village reserves the right to grant other franchises to other persons at any time or times.
- B. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

- C. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- D. Transfer of Franchise: No franchise granted by the Village shall be sold, transferred, leased, assigned, disposed of, whether by way of sale, merger, consolidation or otherwise, without in each case the prior written consent of the Village. The consent of the Village shall be obtained in compliance with the rules established therefore under the Cable Act and the FCC regulations promulgated thereunder, or in the absence of such law and regulations in compliance with the rules described therefore in the applicable franchise. (Amd. Ord. 11-3182-04, eff. 1/24/11)
- E. Franchise Territory. Each franchise granted hereunder shall relate to: 1) the territorial limits of the Village as such limits exist on the date that the franchise is granted; and 2) such other areas as designated in the franchise agreement. (Amd. Ord. 11-3182-04, eff. 1/24/11)
- F. Privileges Must be Specified: No privilege or exemption shall be granted or conferred by any franchise granted except those specifically prescribed herein.
- G. Obligations of Grantee to Obtain Other Permits: Any franchise granted hereunder shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the Village, utility company or from others maintaining utilities in streets. Grantee shall not commence any underground work within the Village without first submitting detailed plans to the Village's engineer, obtaining approval of said plans and obtaining a permit from the Village. Grantee must also comply with all other Village codes and ordinances in installing a broadband communication network within the Village, including but not limited to building codes and zoning ordinances.
- H. Franchise Binding: Any franchise granted hereunder shall be binding upon the grantee, and all successors, lessees or assignees as may be approved by the Village.
- I. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-5: SELECTION OF GRANTEES:

- A. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- B. Criteria for Evaluation of Applications: Applications for a BTN franchise will be evaluated under the following criteria:
1. Experience: Preference may be given to applicants that can give evidence of providing dependable and complete service to other communities and who have established a record of excellent construction practices, ability to meet deadlines, and good planning and marketing practices.

2. Financial Stability: Preference may be given to applicants that present evidence of financial resources which will assure that the applicant will have the ability to complete the entire BTN in the franchise area within the time period set forth in Section 3-7-9.
3. System Design: Preference may be given to a system which contains the flexibility to adjust to new technological development and which indicates that high quality equipment will be used and high quality maintenance practices will be followed.
4. Services: Preference may be given to the applicant that proposes to provide superior programming. In determining what constitutes superior programming, particular consideration will be given to local origination and the resources which an applicant proposes to devote to local origination in order to make it interesting, innovative and financially feasible.
5. REPEALED BY ORD. 06-2953-45, EFF. 9/11/06
6. Local Ownership and Control: The degree of local ownership and control of an applicant may be taken into account. The foregoing criteria are not listed in an order of priority.

C. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

D. Effective Date of a Franchise: The effective date of a franchise shall be the date on which the ordinance referred to in paragraph 4 of Section 3-7-5C is adopted by the Village Board.

3-7-6: FRANCHISE AGREEMENT:

- A. Agreement Required: No franchise shall be granted hereunder unless the applicant and the Village have executed a franchise agreement which shall set forth the terms and provisions of the franchise.
- B. The Village's execution and enforcement of any Franchise Agreement, and the grant of such benefits given to the Grantee in consideration for the same, are an exercise of the Village's home rule authority to enter into contracts having a bearing on the local government and affairs of the Village to the extent granted or permitted by Article VII, Section 6 of the Illinois Constitution. (Amd. Ord. 11-3182-04, eff. 24/11).

3-7-7: FRANCHISE FEE:

- A. The Grantee shall pay to the Village a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues. The payment of franchise fees shall

be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. For any Franchise Fee payments, owed by Grantee in accordance with this Section which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of twelve percent (12%) or two (2) percent over prime lending rates as quoted by Chase Bank U.S.A or its successor, whichever is higher, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the franchise fee liability otherwise accruing hereunder.

- B. In the event that at any time during the duration of a Franchise granted hereunder the Village is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the Village may unilaterally amend such Franchise by ordinance following a public hearing on the matter, provided such amendment is competitively neutral. Said ordinance shall provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Village hereunder, and provide the Grantee at least ninety (90) days prior written notice from the Village to implement the increase in the amount of the Franchise Fee.
- C. Acceptance by Village: No acceptance of any payment by the Village shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a franchise fee under this Chapter or for the performance of any other obligation of the grantee. (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-7-1: CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED:

- A. Fee Imposed: A service provider fee is hereby imposed on any holder providing cable service or video service in the Village.
- B. Amount of Fee: The amount of the service provider fee imposed hereby shall be five percent (5%) of the holder's gross revenues.
- C. Notice to the Village: Unless the holder has earlier sent notice to the Village pursuant to 220 ILCS 5/21-801(a), the holder shall notify the Village at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the Village.
- D. Holder's Liability: The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance

adopting this Article [Chapter] by the holder. The ordinance adopting this Article [Chapter] shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village. Together with this ordinance the Village shall send the holder instructions for remitting the payment and statement required hereby.

- E. Payment Date: The payment of the service provider fee shall be due on a quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
- F. Exemption: The fee hereby imposed does not apply to cable service or video service providers that have an existing franchise agreement with the Village, under 65 ILCS 5/11-42-11, in which a fee is paid.
- G. Credit for Other Payments: An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 3-7-7-1(B).
- H. Applicable Principles: All determinations and calculations under this Chapter shall be made pursuant to generally accepted accounting principles.

No Impact on Other Taxes Due from Holder: Nothing contained in this Chapter shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telecommunications service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

- J. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- K. Late Fees / Payments: All fees due and payments which are past due shall be governed by Section 3-1-9, et seq., of the Village Code. (Amd. Ord. 07-3008-36, eff. 11/26/07)

3-7-8: NATURE OF THE SYSTEM:

3-7-8-1: VIDEO SERVICE PROVIDERS; PEG ACCESS CARRIAGE

REQUIREMENTS: On the date set forth in Section 3-7-7-1(D), but not earlier than 90 days after a holder sends notice to the Village under 220 ILCS 5/21-801(a), a holder shall (i) designate the same amount of capacity

on its network to provide for public, education, and government access use, as the incumbent cable operator is required to designate under this Section and its franchise terms in effect with a local unit of government on January 1, 2007; and (ii) retransmit to its subscribers the same number of public, education, and government access channels as the incumbent cable operator was retransmitting to subscribers on January 1, 2007. (Amd. Ord. 07-3008-36, eff. 11/26/07) (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-8-2: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-9: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-10: CABLE AND VIDEO CUSTOMER PROTECTION LAW: (Amd. Ord. 07-3009-37, eff. 11/26/07)

3-7-10-1: CUSTOMER SERVICE AND PRIVACY PROTECTION LAW:

A. Adoption: The provisions of 220 ILCS 5/70-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the Village's boundaries.

B. Amendments: Any mandatory amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to cable or video providers offering services within the municipality's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the corporate authorities of the Village.

3-7-10-2: ENFORCEMENT: The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law.

3-7-10-3: PENALTIES: The Village, pursuant to 220 ILCS 5/70-501(r)(1), does hereby declare that for any material breach of the standards and requirements of the Cable and Video Customer Protection Law, as incorporated by reference in this ordinance, a cable or video provider shall be subject to the monetary penalties described in accordance with the Comprehensive Fine/Penalty Schedule set forth in Chapter 17 of Title 1 of the Code. Such penalties shall be in addition to the penalties provided in the Law and shall not represent the Village's exclusive remedy for any material breach. All monetary penalties shall apply on a competitively neutral basis. (Amd. Ord. 11-3182-04, eff. 1/24/11)

A. Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of

the law.

- B. The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.
- C. A material breach, for the purposes of assuming penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (B).
- D. The Board of Trustees hereby delegates authority to levy penalties to the Village Administrator.
- E. Any decision of the Village Administrator to levy penalties may be appealed to the Board of Trustees, which shall conduct a hearing on the alleged material breach and penalties levied therefore within twenty-one (21) days following receipt of the cable or video providers request for an appeal.

3-7-10-4: CUSTOMER CREDITS: The Village hereby adopts and incorporates by reference the schedule of customer credits for violations of the Law provided for in the provisions of 220 ILCS 5/70-501(s). Those credits shall be applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for proactively providing the credits and the customer is under no obligation to request the credit.

3-7-11: RATES AND CHARGES:

- A. Rates and Service Schedules: The grantee shall at all times maintain on file with the Village a complete and current schedule showing all services being provided under the grantee's franchise, the fees and charges for each of such services, the charges for connections or disconnections and any other charges which may be made by the grantee in connection with the BTN. Such schedule shall also show the components of the basic service and the pay service, each on a channel-by-channel basis, the monthly charge for each service package, and reasonably complete descriptions of each service package. (Ord. 84-787-01)
- B. REPEALED BY ORD. 06-2953-45, EFF 9/11/06.
- C. REPEALED BY ORD. 06-2953-45, EFF 9/11/06.
- D. REPEALED BY ORD. 06-2953-45, EFF 9/11/06.
- E. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

F. No Consideration Beyond Schedule: A grantee shall not receive any consideration whatsoever for or in connection with its provision of service to its subscribers other than as set forth in this Section or in the schedule then on file with the Village.

G. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-12: RECORDS AND REPORTS:

A. Records Required: Each grantee shall at all times maintain:

1. A record of all complaints received and interruptions or degradation of service experienced for the preceding three (3) years.
2. A full and complete set of plans, records and "as built" maps showing the exact location of all BTN equipment installed or in use in the Village (exclusive of subscriber service drops).
3. Financial records of the grantee in connection with its activities within the Village maintained in a manner distinguishing revenues earned within the Village from revenues earned by the grantee in other municipalities. . (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-13: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-14: REVIEWS, MODIFICATIONS AND RENEWAL OF THE FRANCHISE:

A. Reviews: On or about the third and sixth anniversaries of the effective date of the franchise, the Village Board shall schedule and hold a special public meeting or meetings with the grantee to review the performance by the grantee under the franchise, including future plans of the grantee regarding operation and performance. In particular, the Village may inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.

B. Modifications: No provision of any Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate resolution or ordinance by the Village, as required by applicable law.

C. Renewal: Franchises granted hereunder may be considered for renewal in a manner which complies with the procedures set forth therefore in the Cable Act and the FCC regulations promulgated thereunder, or in the absence of such law and regulations in compliance with the rules described therefore in the applicable franchise. The Village's election to proceed with a formal or informal renewal proceeding shall in no event prejudice the Village's right to

proceed on the alternative basis. (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-15: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-16: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-17: PROCEDURE FOLLOWING REVOCATION OR EXPIRATION OF FRANCHISE:

- A. Disposition of Facilities: If a franchise expires, is revoked or is otherwise terminated, the Village may order the removal of the network facilities from the Village within a reasonable period of time, as determined by the Village.
- B. Restoration of Property: in removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that has been made by it and shall leave all public streets, easements and places in as good condition as prevailed prior to the grantee's removal of its equipment and appliances, without affecting the electrical or telephone BTN wires, or attachments. The Village shall inspect and approve the condition of the public streets and public places, and BTNs, wires, attachments and poles after removal. The liability, indemnity and insurance as provided herein, and the letter of credit provided herein, shall continue in full force and effect during the period of removal and until full compliance by the grantee with all the terms and conditions of this Section 3-7-17B and this Chapter.
- C. Restoration by the Village; Reimbursement of Costs: in the event of a failure by the grantee to complete any work required by Section 3-7-17A and/or Section 3-7-17B, or any other work required by the Village ordinances within the time as may be established and to the satisfaction of the Village, the Village may cause such work to be done and the grantee shall then reimburse the Village for the costs thereof within thirty (30) days after receipt of an itemized list of such costs; or the Village may recover such costs through the letter of credit provided by the grantee. The Village shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.
- D. Conveyance upon Revocation/Non-Renewal: The sale, transfer or conveyance of the Cable System upon the revocation or non-renewal of any franchise granted hereunder shall be performed in a manner which is not inconsistent with the Cable Act and the FCC regulations promulgated thereunder. (Amd. Ord. 11-3182-04, eff. 1/24/11)
- E. Village's Rights Not Affected: The termination and forfeiture of any franchise shall in no way affect any of the rights of the Village under the franchise or any provision of law, and the grantee shall continue to maintain records and make reports as required by this Chapter until such time as all payments due the Village under this Chapter have been paid and accounted for to the

reasonable satisfaction of the Village.

3-7-18: HIRING AND EMPLOYMENT PRACTICES: In the carrying out of the construction, maintenance and operation of the BTN, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

3-7-19: REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

3-7-20: REPEALED BY ORD. 07-3009-37, EFF. 11/26/07.

3-7-21: RIGHTS RESERVED TO THE VILLAGE:

- A. Eminent Domain: Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the Village to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value; and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the Village's right of eminent domain.

- B. All Legal Rights and Powers: There is hereby reserved to the Village every right of power which is required to be herein reserved or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirement of the Village in its exercise of such rights or powers, whether heretofore or hereafter enacted or established. Without limitation of the foregoing, the right is hereby reserved to the Village to adopt and enforce in addition to the terms, conditions and provisions contained in this Chapter and in otherwise existing applicable ordinances, such additional ordinances, rules and regulations as it shall find necessary in the exercise of its police powers.

- C. No Waiver: Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental rights or powers of the Village, subject to the rights of a grantee under its franchise and the franchise agreement.

- D. FCC Jurisdiction: If the FCC or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted under this Chapter, then to the extent such jurisdiction preempts or precludes the exercise of like jurisdiction by the Village, the jurisdiction of the Village shall terminate; provided, however, the Village shall thereupon have the right to modify or amend any of the provisions of this Chapter and of the franchise agreement to such reasonable extent as may be necessary :o carry out the full intent and purpose of this Chapter, after consultation with the grantee.

- E. Village's Contract Rights: The preemption or preclusion by the State of Illinois

of the exercise by the Village of any of its police powers shall not diminish, impair, alter or affect any contractual benefit to the Village or grantee nor any contractual obligation of the grantee under any franchise issued hereunder. Any and all rights, powers, privileges and authorization arising under this Chapter or any franchise agreement are each and all hereby declared by the Village and any grantee accepting any franchise hereunder to be contractual in nature and to be for the benefit of the Village.

- F. Right to Make Rules and Regulations: There is hereby reserved to the Village the right to impose rules and regulations, reasonably required, in order to better carry out the purpose and intent of this Chapter. Before any such rules and regulations are adopted, the Village shall give notice to the grantee and afford the grantee an opportunity to be heard.

3-7-22: CONTINUING REGULATION AND ADMINISTRATION BY THE VILLAGE:

- A. Continuing Supervision by Village Board: The Village Board shall have continuing supervision over the operation of any franchise granted hereunder. Routine responsibilities in the administration of this Chapter and any franchise agreement hereunder shall be performed by the Village Manager. (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-23: UNLAWFUL ACTS:

- A. Unlawful interception of Communications: it shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a grantee's BTN¹ for the purpose of enabling such person or any other party to receive any signal, information or intelligence transmitted over the BTN, without payment to the grantee of full amount properly due for such signal, information or intelligence.
- B. Unlawful Tampering With Equipment: It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any BTN, wires or other equipment used for the distribution of signals, information or intelligence over a grantee's BTN.
- C. Penalties: It shall be a misdemeanor punishable by the fine described in accordance with the Comprehensive Fine/Penalty Schedule set forth in Chapter 17 of Title 1 of this Code for any person to violate any of the provisions of this Section 3-7-23. (Amd. Ord. 11-3182-04, eff. 1/24/11)

3-7-24: MISCELLANEOUS:

- A. Compliance With Applicable Laws and Regulations: Each grantee, at its expense, shall comply with all generally applicable laws, orders and regulations of Federal, State and Village authorities.

- B. Diligence by Grantee: Each grantee shall diligently apply for all necessary permits and authorizations required in the conduct of its business, and shall diligently pursue the acquisition thereof, including necessary pole attachment agreements, easements and necessary authorizations from the Federal Aviation Agency to construct such receiving antennae as may be required, and any necessary authorizations or waivers from the FCC, and shall assist the Village in filing its application to the FCC for waiver of franchise fee limitations.
- C. Notification to Village of Certain FCC Communications: Each grantee shall not apply for any waivers, exceptions or declaratory rulings from the FCC or from any other Federal or State regulatory agency without prior written notification to the Village Manager.
- D. Transfer of Village's Rights, Powers or Duties: Any right or power in, or duty impressed upon, any officer, employee, department or board of the Village shall be subject to transfer by the Village to any other officer, employee, department or board of the Village.
- E. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- F. No Waivers by Village: A grantee shall not be excused from complying with any of the terms and conditions of this Chapter or the franchise agreement by any failure of the Village, upon any one or more occasions, to insist upon the grantee's performance or to seek grantee's compliance with any one or more of such terms or conditions.
- G. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- H. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.
- I. Construction of Chapter: This Chapter shall be construed and interpreted according to the following principles:
1. All ordinances or parts thereof in conflict with the provisions of this Chapter are hereby repealed.
 2. Words in the present tense include the future.
 3. Words importing the singular number may extend to and include plural, words importing the plural number may extend to and include the singular, and words in masculine gender shall include female gender.
 4. The specification in this Section of principles to apply in the construction and interpretation of this Chapter shall not be a limitation as to other applicable principles.
 5. Whenever this Chapter shall set forth any time for any act to be performed

by or on behalf of the grantee, such time shall be deemed of the essence and any failure of the grantee to perform within time allotted shall always be sufficient grounds for the Village to terminate, cancel and revoke the grant or use other remedies.

J. REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.

APPENDIX I

REPEALED BY ORD. 11-3182-04, EFF. 1/24/11.